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BEFORE THE HOUSE AVIATION SUBCOMMITTEE  
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Chairman Mica, Ranking Member Costello, and other Members of this distinguished Subcommittee, on behalf of the more than 260,000 employees and contractors of FedEx Corporation worldwide, thank you for the opportunity to testify today. FedEx appreciates the chance to explain why we believe that now is the time to seize the enormous economic and consumer benefits of an historic U.S.-EU open aviation agreement and why we support the Department of Transportation's Notice of Proposed Rule Making (NPRM). Over the years, this Subcommittee has made an invaluable contribution to U.S. international aviation by steadfastly supporting market opening agreements. FedEx is very grateful for that unwavering leadership which has significantly benefited our customers, our employees, and the U.S. economy.

At the outset, let me convey the regrets of Frederick W. Smith, my Chairman, that he could not be here today to testify. As you know, Mr. Smith has great passion for removing barriers to global competition and permitting the marketplace, not governments, to allocate air service opportunities. More than once, he has expressed to this Subcommittee his frustration with protectionist barriers to air service trade to and beyond important international markets. Those barriers cause inefficiencies in our global network and harm our customers as well as the economies of those short-sighted countries. Regardless of the messenger, our message today is one that is familiar to any observer of FedEx over the years. Support for opening up global trade and, in particular, liberalizing global air transportation services, is a bedrock principle for FedEx.

The subject of this hearing is opportunity, or perhaps more accurately, how not to miss an opportunity. An historic U.S.-EU open air service trade agreement is at our fingertips. An important policy step is under review at the Department of Transportation. The question is whether we step forward and grasp the future by embracing these opportunities now or, instead, stand back and gamble that they might be attained at some unknown point in the future. We believe that is the stark choice presented to this Subcommittee by pending legislation that would prohibit DOT from issuing a final rule on its pending NPRM, and in doing so, doom the pending U.S.-EU agreement.

Given the significant economic and consumer benefits of a U.S.-EU agreement and the importance of continuing progress in global aviation liberalization, FedEx believes the choice is clear. Sound trade policy dictates that you enable the Administration to continue with these important steps. FedEx can tell you emphatically that delay in closing international aviation agreements is not risk-free. In 1995, we were on the cusp of a U.S.-U.K. agreement that would have fully liberalized air cargo rights. Instead of seizing that opportunity, U.S. Government officials decided to first conclude a limited

passenger mini-deal with the British. Government officials assured us delay would be benign, and a broader U.S.-U.K. agreement that fully liberalized cargo rights would require that we wait patiently for a few more months. We are still waiting — more than 10 years later. The political and policy stars that must align to permit contentious aviation agreements to be completed do not remain in place indefinitely. As our more than 10-year-long wait for full liberalization of the U.K. cargo market dramatically shows, opportunities delayed for months can easily turn into benefits lost for decades.

In November 2005, the U.S. and EU negotiators announced that they had reached an “agreed text” for an historic transatlantic air services agreement. This agreement, when signed, will represent a new approach for the U.S., in that it is a bilateral agreement, but with a large number of parties on one side — signatories will be the European Commission as well as each of the 25 EU Member States. It will provide for full Open Skies rights for U.S. and EU carriers, completing a network of liberalized rights among the world’s two largest aviation markets. DOT, the State Department, and the European Commission negotiators should be applauded for their perseverance, creativity, and hard work in forging this agreement.

Is it a perfect agreement? No. Nonetheless, it is a very good agreement for the U.S. overall and it would be a serious mistake for Congress to force the Administration to put it on hold. Delay could be fatal, as we have seen before. The agreed text could unravel due to political pressure from parties unable to accept and adapt to change. Carriers who failed to undermine the talks to protect their parochial interests — such as those that seek to perpetuate Fortress Heathrow — would be given a reprieve to try again to block others’ market entry. In addition, there could be unanticipated industry or political developments. Maintaining the optimal political and policy conditions required for any international aviation agreement, let alone one of this magnitude, is a gargantuan task.

Let me now turn to the value of this U.S.-EU agreement to FedEx and our customers. This agreement will provide for full Open Skies rights for U.S. and EU carriers, completing a network of liberalized rights among the world’s two largest aviation markets. From FedEx’s point of view as a global all-cargo carrier, this will provide great benefits in the form of complete and unfettered rights to fly to, between, and beyond the Member States of the EU. So-called “Fifth Freedom” rights — the ability to fly to a foreign country, pick-up cargo, and freely fly on to a third country — with all European countries have been a long-sought goal of FedEx. Such operational flexibility is vital to the development of a highly efficient network, permitting us to connect all points in the EU to offer the best and most cost-effective services between the U.S. and all of Europe, and beyond.

Without this agreement, outdated constraints on free air service trade would continue to adversely affect our global network. We will continue to be blocked in third-country operations at all those European points where an Open Skies agreement is not in force. To put this operational hardship into perspective, service opportunities would remain constrained with 40 percent of EU Member States, since only 15 of those 25 countries currently have Open Skies agreements. Let me emphasize these constrained markets are not small and insignificant ones. For instance, today our operations in important markets such as the U.K. and Ireland are still governed by decades-old agreements with the U.S. that restrict third-country operations. In the U.K., we have made significant investments at London’s third airport, Stansted, but still cannot carry local traffic on aircraft from there to our hub at Paris’ Charles de Gaulle Airport. That kind of barrier

makes no economic sense yet would remain in place if the U.S-EU progress were thwarted. In addition, of the 10 EU accession states, only six have agreements with the U.S. FedEx believes that the new traffic rights and other provisions of the agreed text offer significant immediate and long-term benefits for its operations and welcomes the milestone reached by the U.S. negotiating team.

Mr. Chairman, now let me turn to FedEx's views on the Department of Transportation's Notice of Proposed Rule Making (NPRM). As the Subcommittee is aware, the agreed U.S.-EU text is presently under review by European Member States. One element of their concern is the regulatory barrier to foreign investor participation in U.S. carrier commercial management. DOT's November 2005 NPRM is intended to address that concern, within the existing U.S. law on ownership and control of U.S. airlines. It does so without changing existing statutory restrictions on foreign ownership in any way, in much the same way as the Civil Aeronautics Board began to reinterpret the public interest two years before the Airline Deregulation Act passed. And of course, those fully-respected statutory restrictions are solely within Congress's jurisdiction. FedEx supports DOT's proposal as both an important public policy advance in its own right, as well as an indispensable tool to help fully open aviation markets throughout the EU and with other important U.S. aviation partners.

This change does not alter the fact that airlines in the U.S. and abroad will have a choice about whether to accept or reject any foreign investment. As we said initially, this is about creating opportunities – opportunities for U.S. airlines to seek out new investors, and opportunities for those investors to bring new approaches into our marketplace. No U.S. carrier will be required to take on a new investor, and no foreign investor will be allowed to exceed the numeric limits on equity, board membership, or senior management participation set forth in the statute. But the NPRM will create opportunities for new ideas and new dollars to come to those carriers that may want and need them.

The Department's proposal ensures that those areas of particular sensitivity – the areas of the most important governmental interests – remain under the control of U.S. citizens. Safety, aviation security, and national defense: these areas will still be managed by U.S. citizens and the Department will review these requirements on a continuing basis. At the same time, it gives greater flexibility in other areas of day-to-day operations that do not raise similar public interests.

Furthermore, any carriers with foreign investment will be subject to the same U.S. regulatory system as a non-foreign invested one – this rule does nothing to relax any U.S. regulatory scheme outside of this economic arena. Aviation management and workers will still have the same rights and responsibilities that they have today under U.S. law and rules today.

DOT's NPRM thus offers an opportunity for both foreign and U.S. aviation interests to expand their commercial opportunities while respecting and safeguarding sensitive U.S. governmental interests. Simply put, we believe it strikes an appropriate balance. In these tough times, citizens look to their government to provide maximum public good with minimum governmental intervention.

Importantly, the NPRM requires that the homelands of foreign investors seeking to rely on the rule make similar investment and management opportunities available for U.S.

interests. As shown by the concerns we expressed regarding DHL Airways/ASTAR Air Cargo three years ago, FedEx believes strongly that fairness and sound trade policy dictates that U.S. businesses be guaranteed reciprocal opportunities. U.S. commercial interests should never be placed at a competitive disadvantage by policies or decisions of our own government that permit a foreign business to reap the full benefits of our markets while that foreign competitor's home country simultaneously denies the same opportunities to U.S. companies. We are very pleased that DOT embraced the principle of reciprocity in its NPRM. By doing so, it ensured the proposal is a reciprocal market-opening tool, not a unilateral gift.

The encouragement of investment in U.S. carriers from foreign sources and the participation of foreign managers in the commercial side of airlines can spur new businesses and innovate within existing ones, and thus can create jobs for U.S. workers. At the same time, by requiring that such opportunities be reciprocal, U.S. entrepreneurs – be they established U.S. carriers wanting to be in a new market or simply some Americans with new ideas and international ambitions – can broaden their scope and strengthen the U.S. position in aviation globally.

The proposal also limits its benefits to countries that have signed Open Skies agreements with the U.S. We believe that is another important aspect of the Department's proposal. It creates a policy "carrot" for countries that have yet to embrace Open Skies. While the U.S. government has made significant progress with this policy initiative begun in 1992 – 80 countries have signed these agreements, including those in the multi-party MALIAT agreement – there is still a significant way to go. In fact, markets of some of our largest and most important air service trading partners remain only partially liberalized. For instance, while China entered into a significantly more modern agreement with the U.S. in 2004, barriers to open U.S. air carrier access in that huge and critical market remain. Other important and growing air service markets such as Hong Kong steadfastly resist any meaningful expansion of U.S. carrier participation, even while arguing for increased access to the U.S. market for their airlines.

FedEx seeks Open Skies agreements in all those markets that still limit U.S. carrier market entry. By offering a new incentive to foreign governments and their citizens to embrace Open Skies, we believe that this proposal gives DOT and the State Department an important new tool to help pry open stubbornly restrictive air service markets. Contrary to what critics would have you believe, this proposal is not a special deal for Europe, but offers potential benefits beyond the transatlantic market. Its reach and potential profound impact as a lever for opening air service markets are far broader in geographic scope and potential magnitude. It will act as an incentive to help open air service markets wherever motivated investors might be found that have capital and new ideas for the U.S. air transport industry, provided that their home country embraces Open Skies.

We want the success of Open Skies to be repeated in the fast-growing markets of Asia. We want to provide our global services to all Americans, so that they might reach the international markets of interest to them, whether those markets are in Europe or in the new markets of Asia. The FedEx network, with its hubs and spokes that today provide services to every U.S. address, can benefit from expanding Open Skies opportunities and become an even more valuable tool for U.S. business competitiveness.

Mr. Chairman, FedEx strongly believes that the window of opportunity in which the U.S. and EU came together to forge this agreement will not remain open indefinitely. Given the enormous upside of the U.S.-EU agreement for consumers, the U.S. commercial aviation sector, and the U.S. economy, FedEx believes Congress should not mandate a delay that might be fatal to a long-sought, historic U.S.-EU agreement.

Furthermore, others around the world are watching how this Open Skies initiative progresses. To stop now, with a number of critical U.S. negotiations scheduled for 2006, would certainly send a harmful message. It would say that the U.S. no longer wants Open Skies opportunities for its carriers. To withdraw the policy "carrot" of the NPRM would also signal an acquiescence to protectionism at a time when U.S. carriers want more, not less, international opportunities.

Mr. Chairman, let me conclude by reiterating that FedEx consistently and steadfastly supports liberalization of the world-wide air service marketplace since it enables us to better and more efficiently serve our customers and allow more people, business, and communities to join in international trade. As I testified earlier, we believe that while the U.S.-EU agreement isn't perfect, it is a very important step forward and certainly deserves this Subcommittee's support for its completion without delay. Similarly, we regard the NPRM to be an important and measured step forward towards an important goal. An historic U.S.-EU open air service trade agreement is within our reach. We hope this Subcommittee and the Congress will agree, without further delay, that now is the time to seize it.

Again, on behalf of FedEx's more than a quarter million employees and contractors, thank you for the opportunity to share FedEx's views with this distinguished Subcommittee.

Thank you.